

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

FLOCKHART et al.

Serial No.: 10/673,118

Filed: September 26, 2003

Atty. File No.: 4366-106

For: "METHOD AND APPARATUS FOR
LOAD BALANCING WORK ON A
NETWORK OF SERVERS BASED ON THE
PROBABILITY OF BEING SERVICED
WITHIN A SERVICE TIME GOAL"

) Group Art Unit: 3676
)

) Examiner: WAI, ERIC CHARLES
)

) Confirmation No.: 9237
)

) INTERVIEW SUMMARY
)

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
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§1.6(a)(4) ON

April 23, 2008

SHERIDAN ROSS P.C.

BY:

Sheridan M. Frank

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

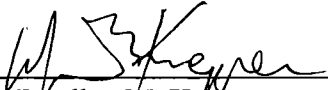
On April 21, 2008, the undersigned received a telephone message from Examiner Wai regarding the above-identified patent application. In subsequent telephone conversations held between Examiner Wai and the undersigned on April 22, 2008, the Examiner informed the undersigned that, as part of reopening prosecution following the filing of a Notice of Appeal by the Applicant, the Examiner had identified additional prior art believed to be relevant to the pending claims. In particular, the Examiner identified U.S. Patent No. 7,013,344 to Megiddo ("Megiddo"). However, the portion of the Megiddo patent identified by the Examiner as being particularly relevant makes no mention of calculating a number of opportunities to service a work request within a target time, as required by the claims. The Examiner indicated that such a disclosure was considered to be met by the discussion of the calculation of a probability measure and the assignment of tasks to machines having higher levels of available capacity at columns 4 and 5 of Megiddo. However, as argued by the undersigned to the Examiner, although Megiddo may be taken as disclosing metrics for expressing the capacity of computers, the failure of that

reference to disclose calculating a number of opportunities to service a work request within a target time as claimed constitutes a failure to meet each and every element of the claims.

Accordingly, it is the undersigned's position that the pending claims are patentable over the Megiddo reference. Moreover, the deficiencies of the references previously cited with respect to the pending claims are not addressed by Megiddo, even if Megiddo were combined with those other references. No agreement regarding allowable subject matter was reached.

Respectfully submitted,

SHERIDAN ROSS P.C.

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Date: April 23, 2008